

Caroline Mitchell #143124
Elaine Wallace # 197882
Sarah Hamilton # 238819
JONES DAY
555 California Street, 26th Floor
San Francisco, CA 94104-1500
Telephone: (415) 626-3939
Facsimile: (415) 875-5700
cnmitchell@jonesday.com
ewallace@jonesday.com
skhamilton@jonesday.com

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

PATRICK M. MCCOLLUM, et al.,

Plaintiffs,

v.

CALIFORNIA DEPARTMENT OF
CORRECTIONS AND
REHABILITATION, et al.,

Defendants.

Case No. C 04-3339 CRB (EDL)

**STIPULATION AND ~~PROPOSED~~
ORDER RE DEADLINE FOR
DEFENDANTS TO RENEW THEIR
MOTION TO DISMISS**

Courtroom: 8, 19th Floor
Judge: Hon. Charles R. Breyer
Action filed: August 16, 2004

WHEREAS, discovery in this case was stayed on March 3, 2006 pending the Court's resolution of Defendants' Rule 12(b) motion to dismiss the claims of Plaintiff Patrick McCollum, a Wiccan clergyman, and the eight named Wiccan/Pagan inmates (the "Inmate-Plaintiffs").

WHEREAS, at the July 7, 2006 hearing on Defendants' motion, the Court opened discovery on the Inmate-Plaintiffs' alleged failure to exhaust their administrative remedies but indicated that all other discovery would remain stayed.

WHEREAS, in its August 8, 2006 Order on Defendants' motion, the Court deferred ruling on the portion of the motion relating to the Inmate-Plaintiffs' claims pending resolution of the exhaustion issue. The Court ruled on the portion of the motion relating to Plaintiff McCollum but

1 discovery has remained stayed on his claims as well pending resolution of the Inmate-Plaintiffs'
2 exhaustion issue.

3 WHEREAS, the parties have entered into a series of stipulations specifying which of the
4 Inmate-Plaintiffs' claims are exhausted and have agreed that no further exhaustion discovery is
5 necessary.

6 WHEREAS, Defendants have indicated that they intend to renew their Rule 12(b) motion
7 as to the Inmate-Plaintiffs on some or all of the grounds unrelated to exhaustion set forth in their
8 original motion filed on April 21, 2006.

9 WHEREAS, Plaintiffs would like to have the Rule 12(b) motion resolved promptly so that
10 merits discovery may proceed.

11 **IT IS HEREBY STIPULATED** between Plaintiffs and Defendants, by and through their
12 counsel of record, that Defendants shall file their renewed Rule 12(b) motion no later than
13 October 15, 2007. Should Defendants fail to file the motion by that date, the stay on discovery
14 shall be deemed lifted as of October 16, 2007 and discovery on all issues may proceed
15 immediately thereafter. Any opposition or reply brief must be filed by the deadline set forth in
16 Local Rule 7-3.

1 Dated: August 20, 2007

JONES DAY

2 By: /s/ Elaine Wallace
3 Elaine Wallace

4 Attorneys for Plaintiffs

5
6 Dated: August 20, 2007

EDMUND G. BROWN JR.
Attorney General of the State of California
FIEL D. TIGNO
Supervising Deputy Attorney General
JOSHUA C. IRWIN
Deputy Attorney General
BONNIE J. CHEN
Deputy Attorney General

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9 By: /s/ Bonnie J. Chen
10 Bonnie J. Chen

11 Attorneys for Defendants

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13
14 **ORDER**

15
16 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

17 Date: August 22, 2007

18
19 The Honorable Charles Breyer
United States District Judge

